

# Section 201 – Disability Discrimination

Section 201 of the Congressional Accountability Act (CAA) applies certain rights and protections of the Rehabilitation Act of 1973 and of the Americans with Disabilities Act of 1990 (ADA) to covered employees. Under this section, all personnel actions – such as hiring, discharge, promotion, pay, or benefits – must be free from discrimination based on disability.

The ADA and Rehabilitation Act establish the basic terms of what is prohibited employment discrimination on the basis of disability. The Board of Directors of the Office of Compliance has not adopted regulations on employment discrimination on the basis of disability. However, employing offices and covered employees may find it helpful to refer to court decisions interpreting the ADA and Title VII, as well as the interpretations, opinions, and other materials issued by the Equal Employment Opportunity Commission (EEOC), which is responsible for implementing the applicable sections of the Rehabilitation Act and the ADA.

## 1. Coverage

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The CAA provides that all personnel actions affecting covered employees shall be free from discrimination on the basis of disability. This includes hiring, discharge, promotion, pay, benefits, reassignment, and other personnel actions affecting the terms, conditions, and privileges of employment.

The covered employees and employing offices subject generally to the CAA are described in the “Covered Employees” section of the *CAA Handbook* and the Office of Compliance web site ([www.compliance.gov](http://www.compliance.gov)).

## 2. Employment Discrimination Based on Disability Prohibited

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### *a. Qualified individuals with disabilities*

The law prohibits employment discrimination against “qualified individuals with disabilities.” A “qualified individual with a disability” is an individual with a “disability” who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without “reasonable accommodation,” can perform the essential functions of that position. If an employing office has prepared a written description before advertising or interviewing job applicants, this description will be considered evidence of the essential functions of the job.

A “disability” is a physical or mental impairment that substantially limits one or more major life activities; or a record of such an impairment; or being regarded as having such an impairment.

### *b. Reasonable accommodation*

An employing office is required to make a “reasonable accommodation” to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or covered employee, unless the employing office can demonstrate that the accommodation would impose an “undue hardship” on the operation of the business of the employing office.

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Reasonable accommodation may include, but is not limited to:

- ◆ Making existing facilities used by covered employees readily accessible to and usable by persons with disabilities
- ◆ Job restructuring, modification of work schedules, reassignment to a vacant position
- ◆ Acquiring or modifying equipment or devices
- ◆ Adjusting or modifying examinations, training materials, or policies
- ◆ Providing qualified readers or interpreters

“Undue hardship,” as defined in the ADA, is an action requiring significant difficulty or expense, when considered in light of factors such as:

- ◆ The nature and cost of the accommodation
- ◆ The overall financial resources of the facility providing the accommodation, the number of employees there, and the impact of the accommodation upon the facility's operation
- ◆ The employer's overall financial resources, the overall size of the employer's business, and the nature and structure of the employer's operation

An employing office is only required to accommodate a "known" physical or mental limitation of an otherwise qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently will be able to suggest an appropriate accommodation. If a person with a disability requests, but cannot suggest, an appropriate accommodation, the employing office and the individual should work together to identify one. If a particular accommodation would be an undue hardship, the employing office must try to identify another accommodation that will not pose such a hardship. If an employing office suggests a reasonable accommodation that is different than the one that the employee suggests, it is sufficient if it is an effective accommodation, even if it differs from the one that the employee has requested.

## 3. Inquiries and Medical Examinations

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Before a job offer is made, employing offices may not ask job applicants about the existence, nature, or severity of a disability. Nor may they ask whether the applicant has suffered an on-the-job injury or filed for worker's compensation. Applicants may be asked about their ability to perform job-related functions.

A job offer may be conditioned on the results of a medical examination conducted after the job offer is made, but only if the examination is required for all entering employees regardless of disability. In addition, all information obtained must be maintained separately as confidential medical records, with only limited job-related access allowed.

Medical examinations of current employees, or inquiries about the existence, nature, or severity of a disability, must be job-related and consistent with business necessity.

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## 4. Other Kinds of Prohibited Discrimination

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The ADA, as applied by the CAA, also prohibits:

- ◆ Using standards or criteria that have the effect of discrimination on the basis of disability
- ◆ Using qualification standards, employment tests, or other selection criteria that tend to screen out an individual (or class of individuals) with a disability unless shown to be job-related for the position and consistent with business necessity
- ◆ Denying equal jobs or benefits to a qualified individual because the individual is known to have a relationship or association with an individual with a known disability

## 5. Illegal Use of Drugs and Use of Alcohol

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Covered employees and applicants currently engaging in the “illegal use of drugs” are not protected by the law when an employing office acts on the basis of such use, but former drug users are covered. The “illegal use of drugs” includes both the use of illegal drugs and the illegal use of prescription drugs. The employing office may prohibit the illegal use of drugs, and tests for illegal use of drugs are not subject to the ADA’s restrictions on medical examinations.

Unlike one who illegally uses drugs, an alcoholic may be considered an individual with a disability who is protected by the law. Employing offices may hold individuals who are alcoholics to the same performance standards as other employees. Furthermore, an employing office may prohibit the use of alcohol at the workplace by all employees, and may require that employees shall not be under the influence of alcohol at the workplace.

## 6. Intimidation or Reprisal

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Intimidation, reprisal, or discrimination against a covered employee for opposing practices or for initiating or participating in a proceeding is prohibited.

## 7. Remedies

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In case of a violation of the provisions of the CAA prohibiting discrimination on the basis of disability, several kinds of remedies may be available. The remedy may be enjoining unlawful employment practices; ordering that such affirmative steps be taken as may be appropriate, including reinstatement or hiring, with or without back pay; or any other equitable relief as may be deemed appropriate.

Compensatory damages may be available for: (1) intentional discrimination on the basis of disability; or (2) failure to make good faith efforts to make reasonable accommodation. In such a case, compensatory damages for future pecuniary losses, emotional pain and suffering, and other nonpecuniary losses are capped at no more than \$300,000.